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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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**U.S. Citizenship  
and Immigration  
Services**

B9

Date: **JAN 03 2012**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

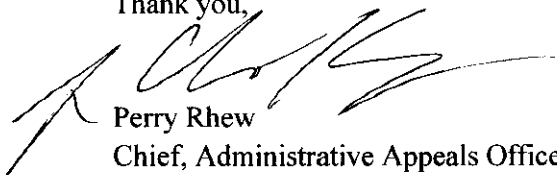
[REDACTED]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with his wife, entered into marriage with his wife in good faith, and that he complied with the provisions of section 204(g) of the Act.

On appeal, counsel submits a supplemental brief and a psychological evaluation.

#### *Relevant Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The record in this case indicates that the petitioner was in removal proceedings at the time of his marriage. In such a situation, section 204(g) of the Act, 8 U.S.C. § 1154(g), prescribes:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending regarding the alien’s right to remain in the United States], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) of the Act bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exemption at section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

*Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –*

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by *clear and convincing evidence* to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(Emphasis added)

The eligibility requirements for immigrant classification as an abused spouse are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

\* \* \*

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General*. Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

\* \* \*

(vii) *Good faith marriage*. Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

*Pertinent Facts and Procedural History*

The petitioner is a citizen of India who was admitted to the United States on August 30, 2008 as an F-1 student. Because the petitioner failed to comply with the terms of his student status, he was served with a notice to appear in removal proceedings on December 10, 2008.<sup>1</sup> The petitioner married D-Y-, a U.S. citizen, on April 19, 2009 in Nevada.<sup>2</sup>

The petitioner filed the instant Form I-360 on January 15, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, residence with his wife and his wife's battery or extreme cruelty. The petitioner timely responded to the request with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

On appeal, counsel submits a supplemental brief and a psychological evaluation.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the

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<sup>1</sup> The petitioner remains in removal proceedings before the Philadelphia Immigration Court and his next hearing is scheduled for January 17, 2012.

<sup>2</sup> Name withheld to protect the individual's identity.

petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into his marriage in good faith. In his declaration, dated January 14, 2010, the petitioner briefly recounted that he met D-Y- on the social networking website Facebook in September 2008 and they maintained contact while he was living in New York and she was living in California. He recalled that in January 2009 she visited him for two days in New York. The petitioner stated that in March 2009 they decided to get married and his parents in India "blessed [him] with prayers for a happy married life." He recalled that in April 2009 he visited D-Y- in California and they traveled to Las Vegas where they wed on April 19, 2009. In response to the RFE, the petitioner submitted an affidavit, dated May 26, 2011, where he reiterated his previous explanation of how he met D-Y-, their courtship and wedding ceremony. Neither of the petitioner's two statements describes his shared residence and experiences with his wife, apart from the alleged abuse.

In response to the RFE, the petitioner also submitted a letter from his friend, [REDACTED] [REDACTED] stated that the petitioner and D-Y- stayed with him in Buffalo for two days and they visited Niagara Falls and went out to dinner. He stated that D-Y- indicated that she loved the petitioner. [REDACTED] noted that the petitioner and D-Y- were excited about their marriage and he gave D-Y- a wedding gift. Although [REDACTED] briefly discussed his knowledge of the petitioner's relationship with D-Y-, his statements lack significant detail and provide no probative information regarding the petitioner's good faith in entering the relationship.

The psychological evaluation submitted on appeal speaks predominately of the abuse in the relationship and only briefly discusses the petitioner's courtship and engagement. In the evaluation, the psychologist, [REDACTED] reported that the petitioner "indicated that he married against his parents' wishes and their strong desire for him to marry a woman from India through an arranged marriage." That statement, however, is inconsistent with the petitioner's initial declaration where he claimed that when he asked his parents for permission to marry D-Y- they "blessed [him] with prayers for a happy married life." This inconsistency detracts from the overall credibility of the petitioner's account of his good faith marriage.

On appeal, counsel contends that "per the 'any credible evidence' standard, the petitioner reasonably met his burden of proof in that under his particular circumstances and facts, he could not be expected to have any more documentary evidence than what he provided." For self-petitioning abused spouses and children, the Act prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant

may not always suffice to establish the petitioner's credibility or meet the petitioner's burden of proof.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents consist of photographs of the petitioner's wedding, two statements from the petitioner, a statement from the petitioner's friend, [REDACTED] and a psychological evaluation from [REDACTED]. [REDACTED] does not discuss in probative detail his observations of the petitioner's interactions with or feelings for his wife during their courtship or marriage. The psychological evaluation from [REDACTED] speaks predominately of the abuse in the relationship and only briefly discusses their courtship and engagement. In his statements, the petitioner discusses his courtship and wedding ceremony, but he failed to describe his shared residence and experiences with his wife, apart from the alleged abuse. In addition, the petitioner's account of his engagement in his initial declaration is inconsistent with statements he made during his psychological evaluation. This inconsistency detracts from the overall credibility of the petitioner's account of his good-faith marriage. Accordingly, the petitioner has failed to demonstrate that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Section 204(g) of the Act further Bars Approval*

Because the petitioner married his wife while he was in removal proceedings and did not remain outside of the United States for two years after their marriage, his self-petition cannot be approved pursuant to section 204(g) of the Act unless he establishes the bona fides of his marriage by clear and convincing evidence pursuant to section 245(e)(3) of the Act. While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5<sup>th</sup> Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate eligibility under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). However, to be eligible for the bona fide marriage exemption under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). "Clear and convincing evidence" is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner failed to establish his good-faith entry into his marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act, he also has not demonstrated the bona fides of his marriage under the heightened standard of proof required by section 245(e)(3) of the Act. Section 204(g) of the Act consequently bars approval of this petition.

#### *Eligibility for Immediate Relative Classification*

Because the petitioner is not exempt from section 204(g) of the Act, he has also failed to demonstrate his eligibility for immediate relative classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act and as explicated in the regulation at 8 C.F.R. § 204.2(c)(1)(iv).

#### *Joint Residence*

The director correctly determined that the record fails to demonstrate that the petitioner resided with his wife.<sup>3</sup> The director noted that the petitioner failed to provide details of his residence with D-Y- by describing, for example, their home furnishings, neighbors, daily routines, or any of their belongings. On appeal, counsel asserts that the petitioner and his wife resided together for a very brief and intermittent period of time during which there was "turmoil and trauma." Counsel states that since the period was so brief, "it is unreasonable to expect that such period would have generated any documentation such as lease, or utility bills or joint accounts or mail at the same address." Although counsel has offered a reasonable explanation of the petitioner's failure to present joint documents, in the petitioner's statements he does not describe their home or shared residential routines in any detail, apart from the alleged abuse. In addition, the petitioner's friend, [REDACTED] does not describe any visit to the petitioner and his wife's residence. The petitioner has offered no other evidence of his joint residence with D-Y-. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Conclusion*

On appeal, the petitioner has not overcome the director's grounds for denial. He has not established that he is eligible for immediate relative classification based on his marriage, that he entered into that marriage in good faith and resided with his wife. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Approval of the petition is further barred by section 204(g) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

**ORDER:** The appeal is dismissed.

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<sup>3</sup> On the Form I-360, the petitioner stated that he lived with his wife from April 2009 until June 2009 and that their last joint address was in Rialto, California.